

Background Checks

Licensee Training

Speakers

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Division of Adult Foster Care and

Home for the Aged Licensing--

Michigan Department of Human
Services

Homes for the Aged

- Public Act 368-MCL 333.20173A

Adult Foster Care Homes

- Public Act 218-MCL 400.734B

Employees required to have full background checks completed.

- Employees, and contractors (or granted clinical privileges for HFA only) hired after 4/1/06, who have ongoing, direct access to residents, or their personal, financial or medical information must have a full background check completed.

Website Requirements

All background checks must
be completed on the
miltcpartnership.org website.

Definitions

- **Exclusionary** = Disqualifying = not employable
- **Non-exclusionary**=no exclusionary findings=employable
- **Exempt** = Grandfathered = employed prior to 4/1/06
- **MCL**= Michigan Compiled Laws

Life Time Exclusions

MCL 400.734b(1)a and MCL 333.20173a(1)a
Reference
42 USC 1320a-7

According to Federal statute an individual is excluded from employment within a HFA and AFC facility if they were convicted of any of the following felonies after 8/21/1996:

- 1) Health Care fraud by a professional.
- 2) Patient abuse in a Medicare/Medicaid certified facility.
- 3) The unlawful manufacture, distribution, prescription or dispensing of a controlled substance.

Life Time Exclusions Continued

Per MCL400.734b(1)h and MCL 333.20173a(1)h.

An individual is excluded if they have been found "Not Guilty by Reason of Insanity".

The following conditions apply:

- 1)The individual is subject to an order by a court.
- 2)The order is placed on the criminal background record.

Felony Exclusionary Time Frames

All felony exclusionary period are determined from the date the individual completes the terms of sentence. (i.e. parole, probation)

Felony conviction can result in 15 year or 10 year exclusionary periods.

Felony 15 Year Exclusions

MCL 400.734b(1)b and MCL 333.20173a(1)b

1. Felony with intent to cause death or serious impairment of a body function.
2. Felony that results in death or serious impairment of a body function.
3. Felony that involves the use of force or violence.
4. Felony that involves the threat of force or violence.

15 Year Exclusions (cont.)

5. A felony involving cruelty or torture
6. A felony involving a vulnerable adult per MCL 400.734b(1)1(b)iii and MCL 333.20173a(1)b(iii).
7. A felony involving criminal sexual conduct
8. A felony involving abuse and neglect
9. A felony involving the use of a firearm or dangerous weapon.
10. A felony involving the diversion or adulteration of a prescription drug or other medication.

Felony 10-year exclusion

MCL 400.734b(1)c and MCL 333.20173a(1)c

All other felonies.

Misdemeanor Exclusionary Time Frames

All misdemeanor exclusionary periods are determined beginning with the date of conviction.

Misdemeanor convictions can result in 10 year, 5 year, 3 year or 1 year exclusionary periods.

Misdemeanor 10-year exclusion

MCL 400.734b(1)d and MCL 333.20173a(1)d

1. A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, the use of a firearm or dangerous weapon that results in a personal injury
2. A misdemeanor involving the use of force or violence or the threat of the use of force or violence
3. A misdemeanor involving a vulnerable adult
MCL 400.734b(1)1(b)iii and MCL333.20173a(1)b(iii)
1. A misdemeanor involving criminal sexual conduct

Misdemeanor 10-year exclusion cont.

- 6. A misdemeanor involving cruelty or torture
- 6. A misdemeanor involving abuse or neglect

Misdemeanor 5-year exclusion

MCL 400.734b(1)e and MCL 333.20173a(1)e

1. A misdemeanor involving cruelty if committed by an individual who is less than 16 years of age
2. A misdemeanor involving home invasion
3. A misdemeanor involving embezzlement
4. A misdemeanor involving negligent homicide

Misdemeanor 5-year exclusion cont.

5. A misdemeanor involving larceny
6. A misdemeanor of retail fraud in the second degree (**shoplifting is retail fraud**)
7. Any misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance (**a non-sufficient funds check is fraud**)

Misdemeanor – 3 year exclusion

MCL 400.734b(1)f and MCL 333.20173a(1)f

1. A misdemeanor for assault.
2. A misdemeanor of retail fraud in the third degree
3. A misdemeanor involving use of a controlled substance

Misdemeanor 1-year exclusion

MCL 400.734b(1)g and MCL 333.20173a(1)g

1. Any misdemeanor involving use of a controlled substance if the person is convicted before the **age of 18**
2. A misdemeanor for larceny or retail fraud in the second or third degree if the individual, at the time of conviction, is under the **age of 16**

Misdemeanor Assault Categories

- 10 year exclusion-Misdemeanor convictions for aggravated assault or aggravated domestic violence.
- 5 year exclusion-Misdemeanor assault and/or assault and battery, including domestic violence.
- 3 year exclusion-Misdemeanor simple assault or assault (without battery).

Misdemeanor Controlled Substance Categories

- 5 Year exclusion-Possession or delivery of a controlled substance.
- 3 Year exclusion-Use of a controlled substance.
- 1 year exclusion-Use of a controlled substance if the individual was under the age of 18 at the time of conviction.

EXEMPTED EMPLOYEES

MCL 400.734b(2) and MCL 333.20173a(2)

- Individuals are classified as exempt/grandfathered if they were employed in a facility before April 1, 2006

Exempt Employee cont.

- Exempt employees convicted of a disqualifying crime after 4/1/2006, is no longer exempt and shall be terminated or denied employment.

MCL 400.734b(2) and MCL
300.20731a(2)(a)

Exempted Employees (Cont.)

- This act does not apply to an individual who independently contracts with an adult foster care home for work not directly related to the clinical, health care, or personal services of the residents, and the duties are not performed on an ongoing basis with direct access to the residents.

Transfers/New Positions

- If a facility hires a previously exempted employee, a full background check must be completed.
- If a full background check is completed on a previously exempted employee, this law does not require disqualification for convictions prior to 4/1/06.
- If a facility is sold to a new owner, new background checks do not have to be completed on employees who continue employment at the facility.

Background Checks cont.

- All exempt employees (employees employed before April 1, 2006) must be fingerprinted by April 1, 2008.
- Licensees **are** required to complete the background check on the Long-term Care Workforce Website (miltcpartnership.org).

Background Checks cont.

At this time, you are required to register exempt employees on the website.

You will be notified when fingerprinting appointments may be scheduled.

Criminal Penalties for Misuse of Information:

MCL 400.734 (10) and MCL 333.20173a(9)

- Provides punishment for misuse of information—Must keep information confidential—use to only make a hiring decision.
- Guilty of misdemeanor punishable by 93 days or a fine of \$1000 or both (i.e., criminal penalty)

What Employees Must Self Report?

MCL 400.734b(11)a and MCL 333.20173a(10)a

- Requires all employees to self-report:
- Arraignments, convictions, findings of abuse/neglect to the licensee including not guilty by reason of insanity
- Reporting of an arraignment is not cause for termination or denial of employment per the statute

Penalties for not Complying with Requirements to Check:

MCL400.734b(10) and MCL 333.10173a(9).

Failure of licensee to conduct criminal background check:

- Guilty of misdemeanor
- Imprisonment for 1 year/Fine of not more than \$5,000 or both. (Gross Neglect or Intentional Misconduct, Or Willfully not conducting the checks)

Rap-Back System: A New Tool to Assist Employers

If an employee or contractor is arrested,
arraigned or convicted of a crime,
and their fingerprints match prints on file
with the State Police,
the MSP will inform the Department,
who, in turn, will inform the employer.

Questions?

WWW.MILTCPARTNERSHIP.ORG

or

DHS: ocalcheck@michigan.gov

(877) 718-5542